



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable John C. Marburger  
County Attorney, Fayette County  
La Grange, Texas

Dear Sir:

Opinion No. O-3474  
Re: Right and duty of county  
superintendent to recognize  
assignment of salary by com-  
mon school district teacher  
under provisions of Article  
2883a, Revised Civil Statutes.

We acknowledge receipt of your letter dated April 25, 1941, with attached "verbatim copy" of an "assignment and transfer of wages" executed by Theresa Beulah Thompson on April 9, 1941, which has been filed with the County Superintendent of Fayette County. You state in your letter that the assignor is a teacher in one of the common school districts of Fayette County, and request our opinion in response to the following questions:

"1. Is the County Superintendent compelled to recognize the assignment and make payment to the assignee to the extent of \$26.85?

"2. If the above question is answered in the affirmative, how should such payments be made? Would it be advisable to write one voucher in the amount of the teacher's salary earned payable to the assignee and assignor or one to the assignee for his assignment and one to the assignor for the balance?

"3. If the first question is answered in the affirmative, may the County Superintendent require that the original assignment be deposited with him before he can be held liable for failure to make payment in accordance with the request of the assignee?"

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Article 2883a, Vernon's Annotated Statutes, enacted by the 46th Legislature, reads, in part, as follows:

"Art. 2883a. Assignment, transfer or pledge of compensation of teachers or school employees

"Section 1. Definition-Teacher and School Employee. The terms 'teacher,' and 'School employee,' within the provisions of this Act shall be held and deemed to embrace and include any person employed by any Public School System, Independent School District, or Common School District, in this State in an executive, administrative or clerical capacity, or as a superintendent, principal, teacher, or instructor, and any person employed by a university, or college, or other educational institution in an executive, administrative, or clerical capacity, or as a professor, or instructor, or in any similar capacity.

"Sec. 2. An assignment, transfer, pledge, or similar instrument executed by any teacher or school employee, wherein any salary or wages, or any interest therein or part thereof, then due or which may become due to such teacher or school employee under an existing contract of employment, shall be valid and enforceable, provided that such assignment, transfer, or pledge be in writing and acknowledged in the same manner as required for the acknowledgment of a deed or other instrument for registration, and provided further that if such instrument be executed by a married person it shall also be executed and acknowledged by his or her spouse in such manner. Such an assignment, transfer, or pledge shall be valid only to the extent that the indebtedness secured thereby is a valid obligation. Any school district, college, university or other educational institution, County Superintendent, or any disbursing agent therefor shall be authorized to honor such assignment without being subject to any liability therefor to the teacher or school employee so executing such assignment; and any sum paid to any assignee in accordance with the terms of any such assignment shall be deemed to be a payment to or for the account of such teacher or school employee; but such assignment shall be valid and enforceable only to the extent of any salary

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which may be due or may become due and earned by such teacher and school employee during the continuance of his or her employment by such school district, college, university, or educational institution."

In our Opinion No. C-2141, dated April 8, 1940, we held that the above quoted statute clearly authorizes a teacher to assign his or her salary in the manner therein stipulated. We also held in the same opinion that it is the right and duty of the employing district to honor such assignments when the same are regularly executed and duly presented by the assignee for payment.

We have also held in our Opinion No. C-2643, dated August 27, 1940, that an assignment authorized by Article 2883a which is not notarized as required by statute "is entirely invalid."

According to the copy of the assignment and transfer forwarded to us in your letter, the assignment in this instance was not "acknowledged in the same manner as required for the acknowledgement of a deed or other instrument or registration" as required by Article 2883a. If this is true with reference to the original assignment it is our considered opinion that the assignment in question is invalid. Opinion No. C-2643.

For your information and convenience we are enclosing herewith a true and correct copy of our Opinion No. C-2141 and Opinion No. C-2643.

In response to your question number one, it is our opinion that assignments of this nature, when executed and acknowledged in accordance with the statutory provisions, are valid and should be recognized by the county superintendent.

In reply to your second question, it is our opinion that it would be advisable to make payment to the assignee and assignor by separate vouchers. This, however, is a matter that should be worked out by the county superintendent.

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In response to your third question, it is our opinion that the county superintendent has the legal right to require that the original assignment be deposited with him before payment is made to the assignee. The duly and legally executed assignment is the only authority that the county superintendent has to make payment to anyone other than the assignor, and we think good business practice requires that he insist on the filing with him of the original assignment before payment is made according to its terms and provisions.

Trusting that we have sufficiently answered your inquiry,  
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 20 1941

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By

*[Signature]*  
Tom D. Rowell, Jr.  
Assistant

TDR:EP

